

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARLIN GIOVANNI PICKENS,

Case No. C22-5019RSM

Plaintiff,

V.

VIRGINIA MASON FRANCISCAN
HEALTH SAINT JOSEPH MEDICAL
CENTER, et al.,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
GRANTING EXTENSION OF TIME TO
SERVE

Defendants.

This matter comes before the Court on Plaintiff Marlin Pickens's Motion to Appoint Counsel and Motion for Extension of Time to Serve the individual Defendants. Dkts. #3 and #8. Mr. Pickens is currently proceeding *pro se* after paying the filing fee. *See* Dkt. #1.

In civil cases, the appointment of counsel to a *pro se* litigant “is a privilege and not a right.” *United States ex. Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (citation omitted). “Appointment of counsel should be allowed only in exceptional cases.” *Id.* (citing *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963)). A court must consider together “both the likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). In “exceptional circumstances,” a district court may appoint counsel for

1 indigent civil litigants. 28 U.S.C. § 1915(e)(1); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th
2 Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

3 Mr. Pickens has presented his claims with detailed factual allegations connected to legal
4 arguments. *See* Dkt. #1-1. The Complaint clearly demonstrates a capacity to proceed in this
5 case pro se. The Court cannot conclude at this time whether his claims have a strong likelihood
6 of success on the merits. Mr. Pickens has presented some evidence of searching for counsel
7 over the last two years, but has not demonstrated that a continued search is futile. He has
8 otherwise failed to set forth exceptional circumstances. Given all of the above, the Court will
9 deny this Motion.

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11 Mr. Pickens has also requested additional time to serve the individual Defendants. Dkt.
12 #8. The Court believes that an appearance on behalf of the individual Defendants has been
13 made and that defense counsel may accept service on their behalf. In an abundance of caution,
14 the Court will grant Mr. Pickens an additional 30 days to serve these Defendants.

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16 Having considered the briefing from Plaintiff and the remainder of the record, the Court
17 hereby FINDS and ORDERS that Plaintiff Marlin Pickens's Motion to Appoint Counsel, Dkt.
18 #3, is DENIED and that his Motion for Extension of Time to Serve the individual Defendants.
19 Dkt. #8, is GRANTED. Mr. Pickens has an additional 30 days from today's date to serve the
20 individual Defendants.

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22 DATED this 20th day of April, 2022.

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26 RICARDO S. MARTINEZ
27 CHIEF UNITED STATES DISTRICT JUDGE
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